



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

FEB 27 2014

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Uniform Issue List: 408.03-00

T:EP:RA:TI

LEGEND:

Taxpayer A =

IRA B =

Custodian C =

Company D =

Country E =

Country F =

Address G =

Amount 1 =

Amount 2 =

Amount 3 =

Amount 4 =

Dear :

This is in response to your letter dated January 18, 2013, as supplemented by correspondence dated May 1, 2013, May 14, 2013, May 16, 2013, May 17, 2013, November 5, 2013, and November 11, 2013, submitted on your behalf by your authorized representative, in which you requested a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalties of perjury in support of your request:

Taxpayer A represents that Amount 1 was distributed from IRA B. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to his not being aware Amount 1 had been distributed from IRA B. Taxpayer A further asserts that Amount 1 has not been used for any purpose.

In Taxpayer A formed IRA B, a self-directed individual retirement account under section 408(a) of the Code, at Custodian C. IRA B owned of the membership units in Company D, which Taxpayer A also formed in to purchase and hold real estate investments for IRA B. Taxpayer A represents that the assets of IRA B were used to fund Company D, and Company D used those assets to purchase a piece of real estate in Country E for Amount 1.

Taxpayer A represents that he has lived and worked overseas since . He has moved at least eight times over the years, and he currently resides in Country F. Taxpayer A represents that he had changed the mailing address for many of his accounts to a temporary forwarding address for overseas service, but that he neglected to inform Custodian C of his address change from Address G (Taxpayer A's former address in the United States, where his ex-spouse and child currently reside). Taxpayer A represents he likely overlooked notifying Custodian C, because Custodian C only issued annual statements. Although Taxpayer A represents that a temporary mail-forwarding request was filed with the United States Postal Service by Taxpayer A's ex-spouse, Taxpayer A cannot specify the date or year it was created, or for how long the temporary service was to last. Taxpayer A acknowledges, however, that the temporary system was not renewed after 6 months, as required, in order for the system to extend up to 364 days. At most, the temporary system would have expired after a period of 6 months.

Taxpayer A also acknowledges that he was aware that some mail was going to Address G, and Taxpayer A represents that his ex-spouse would periodically forward mail to him where he was located. However, Taxpayer A represents that when the majority of the mail appeared to be junk mail, his ex-spouse began putting mail in a box and not forwarding it or sorting it, despite his request that she do so.

Custodian C sent Taxpayer A a fee statement for the year , dated , which was addressed and sent to Address G. The notice requested payment of Amount 2, which represented the sum of annual fees for (Amount 3) and (Amount 4). The notice indicated that the IRA B fees were "seriously" past due, and if payment was not received within the next 30 days, IRA B would be distributed to Taxpayer A. The notice indicates that the fees for , which had been due on , were not paid as of the date of the notice,

Custodian C ultimately distributed Amount 1 and issued Taxpayer A a Form 1099-R that showed a taxable distribution of Amount 1. The Form 1099-R was sent to Taxpayer A at Address G.

Taxpayer A represents that he did not receive a fee statement for the year. He also represents that he did not receive the annual fee notice or the Form 1099-R until , long after the expiration of the 60-day rollover period, when his daughter, who lived at Address G, came to visit him in Country F and brought with her the mail collected from Address G. Taxpayer A represents that he did not realize that he was not receiving annual billing statements, because of mail-forwarding system issues, his living overseas, financial stress and a series of serious medical events involving his current spouse.

Based on the facts and representations, Taxpayer A requests a ruling that the Internal Revenue Service ("Service") waive the 60-day rollover requirement in section 408(d)(3) of the Code with respect to the distribution of Amount 1 from IRA B.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from

an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(a)(2) of the Code requires that the trustee of an IRA be a bank (as defined in section 408(n) of the Code) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the IRA will be consistent with the requirements of Code section 408. One of the requirements is that an applicant must assure the uninterrupted performance of its fiduciary duties notwithstanding the death or change of its owners (the ongoing business concept). This precludes an individual from being a trustee or custodian.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

In this case, Taxpayer A has not presented sufficient evidence showing how the factors outlined in Rev. Proc. 2003-16 affected his ability to roll over the distribution of Amount 1 from IRA B. The facts indicate that Taxpayer A failed to notify Custodian C of his address changes, and Custodian C made a distribution of Amount 1 after it had failed to receive annual fees for two consecutive years. The information presented does not indicate how Taxpayer A's failure to inform Custodian C of his change of address, which ultimately led to the distribution and

the commencement of the 60-day rollover period, was beyond his reasonable control.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service declines to waive the 60-day rollover requirement with respect to the distribution to Taxpayer A of Amount 1.

This letter is directed only to the Taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter is being sent to your authorized representative in accordance with a Power of Attorney (Form 2848) on file with this office.

If you have any questions, please contact _____ (I.D. # _____) by
phone at _____ or fax at _____. Please address all
correspondence to SE:T:EP:RA:T1.

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc: